

[Waiver 1997-6]

MEMORANDUM

July 8, 1997

TO: Councilmember Nancy Dacek
FROM: Laurie B. Horvitz, Chair [signed]
Montgomery County Ethics Commission
SUBJECT: Waiver re Friendship Heights Sector Plan

The Ethics Commission has considered your request for a waiver to allow your participation in the Council's deliberations of the Friendship Heights Sector Plan.

In your request you indicated that the May Company is a major developer in the Friendship Heights area. You are requesting this waiver because your husband owns approximately 11,000 shares of May Company stock and the County Council will be considering this Plan in the near future.

Section 19A-11 of the County Code states:

Unless permitted by a waiver, a public employee must not participate in:

(1) any matter that affects, in a manner distinct from its effect on the public generally, any:

* * *

(C) property or business in which a relative has an economic interest, if the public employee knows about the relative's interest.

A waiver of this prohibition is permitted under Section 19A-8(a) if the Commission finds the following:

- (1) the best interests of the County would be served by granting the waiver:
- (2) the importance to the County of a public employee performing his or her official duties outweighs the actual or potential harm of any conflict of interest: and
- (3) granting the waiver will not give a public employee an unfair advantage over other members of the public.

The Commission has decided to grant your waiver request so that you may participate in deliberations regarding the Friendship Heights Sector Plan. However, the

Commission has decided that you must publicly disclose your husband's stock ownership prior to any such deliberations.

Your request did not specifically address whether you wished to cast a vote regarding any of the May Company's properties. Nonetheless, the Commission addressed this issue at its last meeting and concluded that you should not cast a vote regarding any properties owned by the May Company.

In reaching these decisions, the Commission concluded that the best interests of the County would be served by permitting your participation as a Council member in these important matters. The Commission has concluded that the importance to the county of the performance of your official duties outweighs the actual or potential harm of any conflict of interest. Notably, your role as an elected official cannot be delegated to others. In addition, the harm of any conflict of interest is minimized by the public disclosure of your husband's interest, your limited participation as a non-voting member, and the involvement of other Council members in the deliberations.

The Commission also has determined that granting the waiver will not give you an unfair advantage over other members of the public. Your non-voting participation in this particular sector plan is not likely to affect the value of your husband's stock. Significantly, the May Company is a sizeable company and, therefore, particular decisions by a county government are not likely to significantly affect stock values.

The Commission trusts that this letter is responsive to your request. Please contact the Commission office if you have any questions regarding this decision.